IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14024 of 2005

For Approval and Signature:

HON'BLE MR JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT & 2 - Petitioner(s)

Versus

MAHIJIBHAI RAIJIBHAI CHAUHAN - Respondent(s)

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Appearance :
Mr. Hasit D. Dave, AGP for Petitioner No(s).: 1,2,3.
NOTICE SERVED BY DS for Respondent No(s).: 1.
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CORAM : HON'BLE MR JUSTICE M.R. SHAH

Date : 02/08/2005

ORAL JUDGMENT

This Court had issued Notice for final disposal. Though served, nobody appears on behalf of the respondent. Under the circumstances, this Court has no other alternative but to decide and dispose of the Special Civil Application on merits, ex-parte.

2. In this petition under Articles 226/227 of the Constitution of India, the petitioner State of Gujarat and two others have challenged the legality and validity of the order dated 6.5.2003 passed by the Controlling Authority, Godhra under the provisions of the Payment of Gratuity Act in Case No. 56/2002 as well as the order passed by the Appellate Authority/Deputy Labour Commissioner of Vadodara in Gratuity Appeal No. 3/2004 dated 27.5.2004.

3. Shri Hasit D. Dave, learned AGP appears on behalf of the petitioners and has vehemently submitted that number of submissions were made on behalf of the petitioners before the Appellate Authority challenging the order passed by the Controlling Authority but none of them has been considered and/or dealt with by the appellate authority and without considering and/or discussing the same the impugned order dated 27.5.2004 has been passed by the appellate authority confirming the order passed by the Controlling Authority without assigning any reasons. In fact, Shri Dave has also tried to present the case on merits and has submitted that even the order passed by the controlling authority also which is on merits should be quashed and set aside.

3.1. This Court proposes to remand the matter to the appellate authority as the order of the appellate authority is a non-speaking order without assigning

any reason whatsoever, and, therefore, this Court is not considering the case on merits.

4. While considering the order passed by the appellate authority, it appears to this Court that the judgment and order passed by the appellate authority is a non-speaking order in which no reasons are assigned and, only on this ground, this Court proposes to remand the matter to the appellate authority for deciding the same afresh and to pass a speaking and reasoned order after considering the statements made on behalf of the petitioners as well as the respondents. It is necessary to quote the principle laid down by the Hon'ble Supreme Court in the case of Certified Area Committee Vs. Additional Director (Consolidation), reported in (2002) 10 SCC Page 87, that "reasons are the flesh and blood of judicial adjudication and such reasons must be shown in the orders which are liable to be challenged in the superior court." This Court also, had an occasion to deal with a case similar to the case on hand in Ambalal Somabhai Parmar V. State of Gujarat and Another, reported in 2004(3) GLR Page 2397, wherein this Court has held that "the revisional authority was exercising quasi-judicial power and the revisional authority is required to assign the reasons either to allow the revision application and/or to dismiss the revision application. The revisional authority cannot pass an order without assigning any reason."

It is also held by this Court that not assigning reasons would lead to arbitrariness more particularly, when the order passed by the revisional authority is subject to the challenge before the higher authority and/or before this Court, and if the reasons are not assigned, the higher authority and/or this Court would not be in a position to know what was passing in the mind of the revisional authority while rejecting the revision application. The said observations would be applicable to the facts of the present case also. Considering the above Judgments and considering the order passed by the appellate authority wherein no reason has been assigned confirming the order passed by the controlling authority, the impugned order passed by the appellate authority requires to be quashed and set aside. The matter requires to be remanded to the appellate authority for deciding it in accordance with law and on merits and for passing a speaking and reasoned order after considering all submissions that may be made by the parties.

5. For the foregoing reasons, the petition succeeds. The order passed by the Appellate Authority/Deputy Labour Commissioner of Vadodara in Gratuity Appeal No. 3/2004 under Payment of Gratuity Act dated 27.5.2004 is hereby quashed and set aside. The matter is remanded to the said appellate authority for deciding the same afresh in accordance with law and on merits with a further direction to

pass a speaking and reasoned order while disposing of the said appeal after dealing with submissions that may be made by the parties. Such exercise be done within the period of 4 months from the date of receipt of this order. It goes without saying that till the appeal is decided by the appellate authority any amount deposited by the authority concerned may not be allowed to be withdrawn. It is, however, made clear that this Court has not expressed any opinion on the merits of the case while remanding the matter as the order impugned is quashed and set aside only on the ground that the same is a non-speaking order wherein no reasons are assigned.

[M.R. Shah, J.]

RMR.